**THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY**

–

**WRIT PETITION No.23170 of 1999**

**DATE:16-08-2005**

Between:

Syed Fazlul Rahman S/o. Syed Afzal,

aged about 45 years, Occ: Business,

R/o. 3-5-181, Azmathpura Street,

Karimnagar

**..... PETITIONER**

**AND**

The Chief Conservator of Forests, (Prod & ST),

Andhra Pradesh, Hyderabad & 4 others

**.....RESPONDENTS**

**THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY**

–

**W.P. No.23170 OF 1999**

–

**ORDER**:

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a Writ of Mandamus

declaring the proceedings in Rc.No.4515/98-M2(STC), dated 23-09-1999, issued by the 1st respondent as illegal, arbitrary and in violation of Articles 14, 21 and 300-A of the Constitution of India. The petitioner accordingly prays for issuance of a consequential direction to refund the amount of Rs.2,87,100/- to the petitioner being the amount of bank guarantee encashed by the respondents.

In order to consider as to whether the petitioner is entitled to grant of any relief in this writ petition, a few relevant facts may have to be noticed:

That in pursuance of the tender notice, dated
10-01-1996, issued by the 4th respondent herein, the petitioner offered his bid for beedi leaves at the rate of
Rs.24-92 paise per K.G. and the sale of beedi leaves was accordingly confirmed by the Conservator of Forests, Khammam, vide proceedings, dated 10-02-1996. It is needless to observe that the petitioner had undertaken to comply with all the terms and conditions incorporated in the tender notice and agreement conditions. That in terms of tender notice condition No.27(a) and 28(a), the petitioner has deposited a sum of Rs.2,87,100/- in the shape of bank guarantee, dated 29-02-1996, and accordingly executed the agreement. That as per condition No.7(c)(I) of the agreement and as per the Government Order, dated 30-08-1996, the petitioner was required to furnish further guarantee for a sum of Rs.2,87,078/- on or before 30-09-1996. It is under those circumstances, the Divisional Forest Officer, Kothagudem has issued orders, dated 06-10-1996, terminating the agreement and forfeiting the first security deposit of Rs.2,87,100/- to the State.

The petitioner filed Writ Petition No.27253 of 1996 which was dismissed by this Court vide order, dated
18-11-1997, leaving it open to the petitioner to approach the Civil Court for getting appropriate relief. The petitioner preferred W.A. No.1528 of 1998 which was disposed of by this Court vide order, dated 29-11-1997, leaving it open to

the petitioner to make a proper representation which was required to be considered by the authorities in terms of

G.O. Ms. No.264, dated 18-02-1997. It is pursuant to that order the petitioner submitted his representation, dated

16-01-1998, to the 2nd respondent – Conservator of Forests, Khammam and the same was dismissed. The petitioner filed C.C. No.511 of 1998 in this Court and the same was closed vide orders, dated 07-09-1998, however directing that the representation so made by the petitioner and the question whether the benefit given under the G.O. 254, dated

18-06-1997, shall be considered. The matter was again examined and an opportunity of hearing was given to the petitioner to engage an Advocate to appear on his behalf. The Conservator of Forests having examined the entire issue in the light of the directions of this Court, rejected the representation vide order, dated 09-10-1998, against which the petitioner filed appeal before the 1st respondent – Chief Conservator of Forests, A.P., and the 1st respondent once again examined the entire issue with reference to each of the grounds of the so-called appeal and found no merit in the representation and accordingly held that the question of refunding first 10% security deposit, which is in the shape of bank guarantee, cannot be refundable and further held that the petitioner is liable to make good of the loss sustained by the Government due to resale of the beedi leaves.

The Government noted that every care has been taken by the Department to protect the quality and the quantity of the beedi leaves and the beedi leaves pertaining to the unit purchased by the petitioner were disposed of in resale for a reasonable rate which itself establishes that the material was fit for beedi making. Some delay in transporting of the beedi leaves to the godown itself has not resulted in any destruction or affecting the quality and quantity of the beedi leaves.

The beedi leaves are transported to pucca godown and at the time of weighment on 24-09-1999 in spite of information in advance from the Divisional Forest Officer, Kothagudem, the purchaser failed to turn up, evidently to escape from the responsibility of payment of due amount. It is that order which is challenged in this writ petition.

Learned counsel for the petitioner strenuously contends that the Government did not properly consider the case and more particularly in the light of G.O. 254, dated 18-6-1997. Reliance is placed upon the judgment of a Division Bench of this Court in W.A. No.1528 of 1997. The submission made by the learned counsel for the petitioner is totally untenable and unsustainable. A Division Bench of this Court disposed of the writ appeal in the following manner.

> "The learned counsel for the appellant however submits that the Government itself has issued certain directions/instructions on 18-6-1997 in G.O. Ms. No.254, Forest Department, which entitles the appellant to relief. If so, it is open to the petitioner - appellant to approach the concerned respondent with a representation to be filed within three weeks from today. Such representation shall be considered by the competent authority and appropriate decision be taken and communicated to the appellant. If the appellant is still aggrieved, it is open to him to file a civil suit or seek any other remedy available to him under law" (emphasis is of ours).

The authority to which the representation was made, having considered every conceivable aspect of the matter, found no merit in the representation made by the petitioner. The Government having reconsidered the issue in the so-called appeal preferred by the petitioner confirmed the view taken by the 1st respondent/Chief Conservator of Forests. The so-called appeal preferred by the petitioner is not maintainable in law. This Court did not give any further right to the petitioner to file appeal against the order passed by the 1st respondent disposing of the representation filed by the petitioner. That apart this Court gave the liberty to the petitioner to file civil suit or avail any other remedy after disposal of the representation by the 1st respondent.

That observation of the appellate Court is required to be understood in proper perspective. What the appellate Court meant is that the writ petition filed by the petitioner is not maintainable in law, since it raises number of disputed questions of facts.

The question is whether the respondents are entitled to encash the bank guarantee ?

As held by the appellate Court in more than one decision, the bank guarantee offered by the petitioner is in the nature of tripartite agreement. The invocation of the bank guarantee itself does not give rise to a cause for filing writ petition. Public law remedies are not available to challenge the action of one of the parties to the bank guarantee in invoking the same. The only substantial ground on which the encashment of bank guarantee could be challenged is on the plea of fraud in obtaining the bank guarantee which is necessarily to be specifically pleaded and proved in a properly constituted civil proceedings.

The petitioner is indulging in speculative litigation by merely taking advantage of passing observation made by the writ appellate Court. No relief could be granted to the petitioner in this Writ petition.

The Writ Petition is totally misconceived and the same shall accordingly stand dismissed. There shall be no order as to costs.

_____

B. SUDERSHAN REDDY, J

Date:16-08-2005.

PV